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ABSTRACT

With their emphasis on due process, these model rules and policies can help schools safeguard the rights of students and ensure that schools are more certain of the facts when all other alternatives have failed and it is necessary to dismiss or expel a student. Local rules and policies based on this model should help to keep both the rights and responsibilities of the student and the school in perspective. (Author/IRT)

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Student Suspension and Expulsion Procedures

A Model Policy & Rules

A Service of Your DPI
May 1975

EA 008 032

MODEL POLICY AND RULES, WITH COMMENTS, FOR ASSISTANCE TO LOCAL BOARDS IN MEETING THE REQUIREMENTS OF PROCEDURAL DUE PROCESS IN DEALING WITH STUDENT SUSPENSION AND EXPULSION

IMPORTANT: THIS IS A MODEL ONLY

This model contains numerous ethical, educational and legal judgments. Do not accept any portion of this model as local policy or rules until after full and sufficient consideration. It is always wise to have proposed local policies and regulations reviewed by legal counsel.

Prepared by a Committee
of the Iowa Department of
Public Instruction

Des Moines, Iowa
May, 1975

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Over the past two decades the courts have taken special notice of what educators have been saying for a long time -- the access to a formal education is fundamentally important to a human being in modern society. This point has repeatedly been emphasized by the courts in decisions relating to the equalization of educational finance, special education, segregation, and due process rights of students. Some educators, however, have not agreed with the courts' protection of the fundamental importance of education by actions taken to prevent arbitrary decisions of boards of education and administrators in removing students from school for disciplinary reasons. In protecting students from being arbitrarily removed from schools, the courts are not trying to "interfere" or "meddle" in education. They are merely trying to see to it that educators live up to the important role in society that has been cast for education.

If a formal education is as vital in today's society as both the courts and educators appear to believe, then every reasonable effort should be made to keep students in school. Any expulsion or dismissal should only be made by schools as a last resort and when all attempts and alternatives to a formal education have been explored and have failed. The exclusion of a student on any other basis would have to be viewed as a failure on the part of the school, not the student.

School officials and staff have a significant responsibility in the consideration of policies and procedures which may effectively terminate for all time the formal education of a student. Both the rights and responsibilities of the student and of the school must be kept in perspective. In the development of such policies and procedures, the material that follows can help schools safeguard the rights of students. It can also ensure that schools are more certain of the facts when all other alternatives have failed and it is necessary to dismiss or expel a student.

Model Policy and Rules for Suspension and Expulsion Procedure

It is of the utmost importance that a delineation be made between "policy" and "rules." Policy is that general statement of direction given by the board of directors to all concerned. Rule is that procedure developed by the school administration by which the policy is to be carried out. Rules detail the application of policy to specific circumstances. Proposed policies and rules should always be reviewed by legal counsel.

This model should not be presented for verbatim adoption. It is offered only for consideration and revision. This model has no direct application for the specific rules regarding misconduct for which a student may be suspended. Schools must be certain to review their regulations governing student misconduct and see that students are informed of such rules.

PROCEDURAL DUE PROCESS DOES NOT GUARANTEE A CORRECT DECISION, IT MERELY ENHANCES ITS LIKELIHOOD

Model Statement of Policy

The principals and persons in charge of attendance centers in the school district shall have the authority to suspend students temporarily. Upon recommendation of the superintendent, the board of directors, by a majority vote, may suspend a student for a period of time not to exceed the end of the current school year. Due process shall be observed.

Legal Reference: Code of Iowa § 282.4
§ 282.5
§ 279.8

Goss v. Lopez 95 S. Ct. 729 (1975)

Model Statement of Rules

I. Administrative Action

A. Probation

1. Probation is conditional attendance during a trial period. Probation may be imposed by the principal or other person in charge of the attendance center for infractions of school rules which do not warrant the necessity of removal from school. The following procedures shall be followed.

2. The principal, or other person in charge of attendance center shall conduct an informal investigation of the allegations against the student prior to imposition of probationary status. Such investigation shall include, but not necessarily be limited to, written or oral notice to the student of the allegations against him and an opportunity to respond. Probationary status will not be imposed for a longer period than ten (10) school days.

Should the student breach the condition imposed for probation, the student may be removed from academic or extracurricular privileges or have more severe penalties, such as suspension, imposed. An investigation similar to that or the informal investigation above shall be made to determine whether the condition imposed has been breached.

Written notice of the probation and the reasons therefore shall be sent to the student's parents or legal guardians, the Superintendent and the President of the Board no later than the school day following the day probation was imposed.

B. In-School Suspension

1. In-school suspension is the tempoary isolation of a student from one or more classes while under proper administrative supervision. In-school suspensions may be imposed by the principal or other person in charge of the attendance center for infractions of school rules which are serious but which do not warrant the necessity of removal from school.

2. The principal or other person in charge of attendance center shall conduct an informal investigation of the allegations against the student prior to imposition of an in-school suspension . Such an investigation shall include, but not necessarily be limited to, written or oral notice to the student of the allegations against him and an opportunity to respond. In-school suspension shall not be imposed for a longer period than five (5) school days. Written notice of the in-school suspension and the reasons therefore shall be sent to the student's parents or legal guardian, the Superintendent and the President of the Board no later than the school day following the day in-school suspension was imposed.

COMMENT: PROBATION AND IN-SCHOOL SUSPENSION ARE TWO DISCIPLINARY ALTERNATIVES TO THE REMOVAL OF THE STUDENT FROM SCHOOL. THE DEVELOPMENT OF OTHER ALTERNATIVES IS ENCOURAGED.

C. Suspension

1. Suspension is the removal of a student from the school environment for periods of short duration. Suspension is to be employed only when all other available school resources are unable to cope constructively with pupil misconduct.

2. A student may be suspended for up to three school days by a principal or other person in charge of an attendance center for a commission of gross or repeated infractions of school rules, or when the presence of the student will cause substantial interference

with the maintenance of the educational environment or the normal operation of the school. The principal or other person in charge of an attendance center may suspend such students only after conducting an informal investigation of the charges against the student, giving the student:

a. Oral or written notice of the allegations against the student.

b. The basis in fact for the charges, and

c. The opportunity to respond to those charges

Should the principal or other person in charge of the attendance center find it advisable, the student may be allowed to confront witnesses against the student, or hear witnesses in behalf of the student.

3. The notice to the student, investigation and informal hearing must precede removal of the student from school. However, nothing should prevent the immediate suspension of a student when the student's continued presence on the school grounds would endanger the student's safety or well-being, the safety or well-being of other members of the school community or substantially interfere with the proper functioning of the school. In the instance of an immediate suspension, a hearing will be held within three (3) school days to determine future action. Such a hearing will be conducted in the spirit of the process envisioned above. In the event the suspension occurred prior to the hearing, the person responsible shall document the basis of the necessity for such action.

COMMENT: MANY PERSONS FEEL THAT THE EMERGENCY PROVISIONS ARE UNNECESSARY BECAUSE SUCH SITUATIONS WOULD BE HANDLED PRIMARILY BY LAW ENFORCEMENT AGENCIES AND THERE WOULD BE NO NEED FOR SUSPENSIONS PRIOR TO A HEARING. PROVISIONS FOR EMERGENCY ACTION ARE SUBJECT TO ABUSE AND ACTIONS TAKEN UNDER THESE PROVISIONS SHOULD BE SUBJECTED TO STRICT SCRUTINY.

4. Notice of the suspension shall be mailed no later than the end of the school day following the day of discovery of alleged misconduct, to the student's parents or legal guardians, Superintendent and to the President of the Board of Directors. A reasonable effort shall also be made to notify the student's parents by telephone or personal contact, and such effort shall be documented by the person making or attempting to make the contact. Written notice to the parents or legal guardians shall include the circumstances involving

the student which led to the suspension and a copy of the Board policy and rules pertaining to suspension.

5. Under no circumstances may more than one administrative suspension be imposed upon a student for the same set of facts giving rise to another suspension.

COMMENT: THE "TACKING ON" OF ONE SUSPENSION TO ANOTHER WILL NOT LIKELY BE VIEWED IN A FAVORABLE LIGHT BY THE COURTS.

D. Administrative suspension from school for an indefinite period of time. When the principal or other person in charge of the attendance center deems it necessary, a suspension from school may be for an indefinite period of time, not to exceed ten (10) school days, with reinstatement conditioned upon a joint conference between school authorities and parents or guardians or upon the completion of educational or psychological testing and observation. In such instances, the principal or other person in charge of the attendance center shall prior to the suspension make known to the student the allegations against him and allow the opportunity for the student to respond. The principal will notify the parents or guardians no later than the end of the school day following the day that the indefinite suspension was imposed, in writing of the circumstances involving the student, the names of school officials or teachers who have knowledge pertaining to the circumstances and enclose a copy of the Board policy and rules pertaining to suspension. A reasonable effort shall also be made to notify the student's parents by telephone or personal contact, and such effort shall be documented by the person making or attempting to make the contact. A written report will be submitted to the Superintendent and the President of the Board of Directors containing all facts concerning the indefinite suspension.

Parents or legal guardians of students so suspended may make an appointment to meet with school administrators at the earliest possible time. At the conclusion of such conference, the school administration shall determine when the student will be reinstated and under what conditions. Under no circumstances shall a student not be reinstated within ten (10) school days.

COMMENT: IMPORTANT NOTE: LEGALLY AND ETHICALLY, THE INDEFINITE SUSPENSION BY ADMINISTRATORS IS FULL OF PITFALLS. THE INDEFINITE ADMINISTRATIVE SUSPENSION IS NOT RECOMMENDED FOR USE BY SCHOOL DISTRICTS. THE INCLUSION IN THIS MODEL IS ONLY TO AID THOSE DISTRICTS

WHICH, AFTER DUE CONSIDERATION, HAVE DETERMINED IT ADVISABLE TO INCLUDE IT IN THEIR OWN RULES.

AN EXCELLENT RECOMMENDED ALTERNATIVE TO AN INDEFINITE SUSPENSION WOULD BE TO FOLLOW THE BOARD SUSPENSION PROCEDURE AND HAVE THE STUDENT'S RETURN TO SCHOOL CONDITIONAL UPON FACTORS DETERMINED BY THE SCHOOL BOARD PURSUANT TO § 282.5.

II. Board Action

A. Board suspensions for lengthy periods of time are extreme measures of discipline to be employed only when all available school resources are unable to cope constructively with pupil misconduct. The removal of a student from the educational environment for any lengthy period of time is viewed as a severe form of punishment to be used sparingly.

B. Upon the recommendation of the Superintendent or his designee, the Board of Directors may suspend a student for commission of gross or repeated infractions of school rules, or when the presence of the student will cause substantial interference with the maintenance of the educational environment or the normal operation of the school. continued

C. A Board decision to suspend must be made by an absolute majority of the Board and not merely a majority of those in attendance. The vote shall be by roll call.

D. The Superintendent, student or his representative may request the hearing before the Board be held in closed session. After due consideration, the Board may determine by an affirmative roll call vote of two-thirds (2/3) of its members present that the matter before it involving the possible suspension of the student is an exceptional reason so compelling as to override the general public policy in favor of public meetings, and hold the hearing in closed session. The student, his parents and their representative may be present. A vote taken on the issue of whether to suspend a student shall be in open public meeting and shall be by roll call vote.

COMMENT: THE PROVISION FOR CLOSED HEARING IS CURRENTLY AVAILABLE UNDER THE OPEN MEETING STATUTES CONTAINED IN CHAPTER 28A, THE CODE 1975. AMENDMENTS TO THIS CHAPTER SHOULD BE READ CAREFULLY TO DETERMINE WHETHER THE ABILITY TO GO INTO CLOSED SESSION HAS BEEN ALTERED.

COMMENT: ALTERNATIVE PROCEDURES FOR HAVING LESS THAN THE ENTIRE BOARD HEAR EVIDENCE AT A HEARING ARE AVAILABLE. HERE FOLLOWS ONE EXAMPLE, OTHERS MAY ALSO BE EXPLORED.

Upon receipt of notice, the President of the School Board shall appoint a hearing panel of not less than three directors of the district. The hearing panel shall consider all relevant evidence introduced at the hearing and make its findings of facts and recommendation of action. Within five calendar days after the hearing, the Board of Directors shall consider the relevant evidence and determine such disciplinary action as it deems to be appropriate, based upon the relevant evidence and the findings of facts of the hearing panel. Prior to the Board's final decision, the verbatim record of the hearing shall be made available to the Board members.

E. Hearing Procedure

1. A written statement of the alleged misconduct given as grounds for the proposed Board Suspension will be given to the student's parents or legal guardians at least five (5) calendar days before the hearing. Such statement will include the names of those school officials and teachers having knowledge of the proposed reasons for Board Suspension. The written statement will be accompanied by a copy of the Board policy and rules pertaining to procedures for Board Suspension of students. The student will not be removed from school until after a hearing has been held and a decision made whether he should be suspended by Board action.

2. A written notice of the date, time, and place of the hearing will be given to the student's parents or legal guardians at least three (3) days before the hearing. This provision may be waived by written agreement of the parties.

3. If the parents or legal guardians of a student cannot be notified, or cannot be present at the hearing because of extenuating circumstances, and request a postponement, the Board shall postpone the hearing until the parents or legal guardians are notified and available to be present. Such request for postponement should be made at least forty-eight hours prior to the scheduled hearing time.

4. If the student has reached the age 18 at the time th
leged acts took place, he is then authorized to make decisi
sign documents and obtain representation on his own behalf
may elect to be represented by his parent or guardian. Ho
notice shall also be given to the parents as outlined above u
the student shows that he is no longer dependent upon or re
with his parents and does not want them notified.

5. If the student, his parent or guardian, or represe
do not request postponement for cause, and are not presen
me and place scheduled in the hearing notice, the hearing
proceed without them. In such an event, the record will sh
factual determination by the Board that sufficient and prope
was given the parties and no postponement was requested.

6. Permission will be granted for the appearance of
or other representation.

7. The opportunity will be granted prior to the hearin
the student or his representative to examine copies of docum
used as evidence. Permission will be granted for the studen
his representative to discuss the matter with administrators
chers and other witnesses.

8. The superintendent or his designee shall present e
in behalf of his recommendation. An attorney hired by the B
may not at the same time present evidence and advise the Boa

9. Witnesses at the hearing, or persons whose testin
been submitted in written form, if available, shall be subje
cross-examination by any party as is necessary for a full a
disclosure of the facts.

10. The opportunity will be granted for the student or
counsel to present the student's version or refutation of the
gations through documents and witnesses. If the student re
to testify, he shall not be punished for refusal to testify, n
such refusal in any way be construed as an indication of gu

11. The Board's decision will be based solely upon ev
introduced at the hearing.

12. Within ten (10) calendar days of the hearing the Board will mail or have delivered to the student and his counsel a written statement of the Board's decision and the factual basis for it.

13. A verbatim record of the hearing shall be made by mechanized means or shorthand reporter. Such record shall be kept by the district for a minimum of one year and shall be made available to the student or his representative upon request and at a reasonable cost.

14. Nothing contained in paragraphs 1 through 13 shall prevent the immediate Board suspension of a student when the student's continued presence on the school grounds would endanger his safety or well-being, the safety or well-being of other members of the school community or substantially interfere with the proper functioning of the school. In the instance of an immediate Board suspension, a hearing will be held within ten (10) days to determine future action of the Board. Such a hearing will be conducted in the spirit of due process envisioned in paragraphs 1 through 13.

(See Comment under I., C., 3.)

COMMENT: THE CODE OF IOWA AUTHORIZES SCHOOL BOARDS TO EXPEL STUDENTS. IT IS DOUBTFUL THAT BOARDS CAN EDUCATIONALLY, OR LEGALLY JUSTIFY THE REMOVAL OF A STUDENT FROM SCHOOL BEYOND THE CURRENT SCHOOL TERM. BECAUSE OF THE INAPPROPRIATENESS OF THE TERM AND THE NORMAL STIGMA INVOLVED, THE TERM EXPULSION HAS BEEN OMITTED FROM THIS MODEL AND REPLACED BY BOARD SUSPENSION.

F. Conditions for Readmission

1. The Board may consider, and by majority vote of those present grant, readmission to a student suspended by Board action at any time and upon any condition it may determine.

2. In no event will a student be suspended beyond the school year in which the Board suspension hearing occurred.

G. A decision may be appealed under Chapter 290, Code of Iowa.

COMMENT: BECAUSE A LONG TERM SUSPENSION IS DETRIMENTAL TO A STUDENT'S FUTURE, IT MAY BE REASONABLE, AND CERTAINLY EDUCATIONALLY JUSTIFIABLE, TO REQUIRE END OF SEMESTER REVIEW OF BOARD SUSPENSIONS. EVEN THOUGH A STUDENT MAY REQUEST A REVIEW AT ANY TIME, A REVIEW BY THE BOARD IS NOT SO AN UNREASONABLE A BURDEN AS TO PRECLUDE THE SCHOOL DISTRICT FROM TAKING THE INITIATIVE IN RETURNING THE SUSPENDED STUDENT TO SCHOOL. SUCH A PROVISION MIGHT TAKE THE FOLLOWING FORM:

> If a student is suspended from school by Board action during the first semester of any given school year, the student's expulsion must be automatically reviewed by the Board of Directors before the beginning of the second semester unless the Board suspension originally took effect during the last three calendar weeks of the first semester. This review may lead to a recommendation that the student shall be reinstated in school for the second semester.

III. Notice To Educational Community

A. Rules regarding the suspension of students shall be published on a regular basis in appropriate school publications.

B. Copies of the rules regarding the suspension of students shall be maintained in each attendance center of the school district and shall be distributed upon request at no cost.

Legal Reference: Code of Iowa §282.4
§282.5
§279.8

Goss v. Lopez 95 S. Ct. 729 (1975)

Suggested Forms for Board Suspensions

Forms 1, 2, 3, and 4 were adapted from Standard and Guidelines For Providing Due Process of Law to the South Dakota Students, published by the South Dakota Department of Education and Cultural Affairs.

These are sample forms which may be used by a school district. Any School Board may develop its own forms but a set of forms similar to these should be used to carry out the due process procedure.

FORM 1 (Recto)

NOTICE OF HEARING

RE: Proposed Board Suspension From School

Information has been presented to me indicating that _____ may be guilty of sufficiently serious violations of the policies, rules and regulations of this school district to require the school board to consider a suspension from school according to procedures adopted by the school district, pursuant to Sections 279.8, 282.4 and 282.5, Code of Iowa.

Specifically, the above-named student is charged with _____

_____

Preliminary evidence and statements thus far indicate that specifically the above-named student did _____

_____

The specific penalty being recommended to the school board is _____

_____

A hearing before the Board of Directors of the _____ School District has been set for the following time and place for the purpose of affording a full discussion of the charges and allowing the student or his parent or representative to refute those charges.

Date and time of hearing: _____

Location of hearing: _____

The student, his parent, guardian, or representative may see a statement of the charges and the supporting statements in the office of the Superintendent of Schools or his designee on or after _____. Written statements,

if any, supporting the student's case should be in the hands of the Superintendent or his designee 24 hours before the hearing begins.

If the student, his parent, guardian or representative wish to waive the hearing, and accept the recommended penalty as stated above, the enclosed waiver form must be returned to the office of the Superintendent of Schools within 24 hours of receipt of this notice. If such waiver is not received, the hearing shall be held as scheduled above. Enclosed is a copy of the Suspension Hearing Procedures of the _____ School District.

_____
Superintendent of Schools

cc: Each School Board Member
File

FORM 2

Date _____

_____
Name of Student

AUTHORIZATION TO REVIEW RECORDS-RE: Hearing regarding Board Suspension from school.

I certify that I am the parent or guardian of _____ and do hereby authorize the _____ School District tc permit _____ to view the school records of the above-named student, including academic and disciplinary records.

_____
Signature of Parent or Guardian

_____
Address

Note: If student is 18 years of age or older, he shall sign above in lieu of parent or guardian.

FORM 3 WAIVER OF HEARING FORM

Date _____

_____
Name of Student

Superintendent of Schools

_____ School District

RE: Waiver of Hearing

I certify that I am the parent/guardian of _____

and that I have received the following items from you:

(a) Notice of hearing on proposed Board suspension from school of above-named student;

(b) The Hearing Procedures of the _____ School District.

I request that the hearing specified in the hearing notice be waived, with the understanding that by so waiving the hearing, the recommended penalty will automatically become effective upon action of the Board of Directors of this school district.

_____
Signature of Parent or Guardian

_____
Address

Note: If student is 18 years of age or older, he may sign above in lieu of parent or guardian.

FORM 4
(Recto)

FINDINGS OF FACT AND RESULTANT ACTION FORM

Date _____

TO: _____ TO: _____
Parent or Guardian Student

_____ _____

_____ _____

RE: Findings of Fact and Resultant Action - from hearing concerning Board Suspension from school of _____
Name of Student

1. A hearing was conducted by the Board of Directors of the _____ _____School District, on _____, at _____ regarding the proposed Board Suspension from school of the above-named student.

2. As a result of this hearing, the Board of Directors of the _____ _____School District has determined the following to be fact:

_____

_____

_____

3. As a result of finding the above list to be fact, the Board of Directors of the _____School District has instructed the Superintendent of Schools of the School District to carry out the following action: _____

_____

_____

FORM 4 (Verso)

4. The decision of this Board of Directors is appealable through Chapter 290, Code of Iowa.

5. Said Student is eligible for re-enrollment on _____.

Signed_____
Superintendent

_____
School District